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7 Attorneys for Plaintiffs

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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 _____)
12 SALLY HART and CENTER FOR)
MEDICARE ADVOCACY, INC.,)

13 Plaintiffs)

14 v.)

15 UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)

16 Defendant.)
17 _____)
18

No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

19 1. This is an action under the Freedom Of Information Act ("FOIA"), 5 U.S.C. § 552,
20 as amended, to order production of certain records related to the Medicare Secondary Payer
21 program.

22 2. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

23 3. Plaintiff Sally Hart resides and has her office in Tucson, Arizona.

24 4. Plaintiff Center For Medicare Advocacy, Inc. ("the Center") is a non-profit
25 corporation with offices in Connecticut, Arizona, and Washington, D.C., that educates and
26 advocates for Medicare beneficiaries.
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1 5. On August 12, 2008 Plaintiff Hart wrote to Defendant's Centers For Medicare &
2 Medicaid Services ("CMS") requesting documents pursuant to FOIA. The letter asked for
3 "information and documents concerning the numbers of attorneys against whom CMS or its
4 agents has taken action to recover conditional payments under the Medicare Secondary Payer
5 program." A copy of the letter is attached as Exhibit A.
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7 6. No response has been received to Plaintiff's August 12, 2008, letter.

8 7. FOIA requires Defendant to respond to requests for information under the Act within
9 20 days, excepting Saturdays, Sundays, and legal holidays. 5 U.S.C. § 552(a)(6)(A)(i).
10 Defendant is in violation of this provision.
11

12 8. On October 30, 2008, Plaintiff Hart wrote again to Defendant's CMS, appealing the
13 failure of Defendant to respond to Plaintiffs' FOIA request within the statutory time limits. A
14 copy of the letter is attached as Exhibit B.

15 9. No response has been received to Plaintiff's October 30, 2008, letter.

16 10. FOIA requires Defendant to respond to appeals within 20 days, excepting Saturdays,
17 Sundays and legal holidays. 5 U.S.C. § 552(a)(6)(A)(ii). Defendant is in violation of this
18 provision.
19

20 11. Plaintiffs have exhausted their administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

21 12. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for
22 Defendant's refusal to disclose them.

23 WHEREFORE, Plaintiffs pray that this Court:

- 24 1. Declare that Defendant's refusal to disclose the requested records is unlawful;
25 2. Order Defendant to make the requested records available to Plaintiffs;
26 3. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and,
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1 4. Grant such other and further relief as the Court deems just and proper.

2 Dated: _____,

3 /s/Sally Hart

4 SALLY HART, AZ Bar No. 013453

5 Center For Medicare Advocacy, Inc.

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7 Tucson, AZ 85719-4743

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8 Attorney for Plaintiffs

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